

10. PROCEDURAL SAFEGUARDS

The Idaho Department of Health and Welfare, the lead agency, assures the establishment of procedural safeguards to meet the requirements of IDEA, Part C and Idaho Code, Title 16, Chapter 1, and to ensure effective implementation of these procedures in order to:

1. meet the requirements of IDEA, Part C;
2. ensure effective implementation of the procedural safeguards by each public agency involved in the provision of the early intervention system;
3. ensure confidentiality of family information; and
4. assure that parents (including surrogate parents) receive prior notice, detailing content in native language and consent to the IFSP process.

Definitions

1. "Consent" means that:
 - a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or normal mode of communication;
 - b. The parent understands and agrees in writing to carrying out the activity for which consent is sought. The consent describes that activity and lists the records (if any) that will be released and to whom;
 - c. The parent understands that the granting of consent is voluntary part of the parent and may be revoked at any time; and
 - d. The parent has the right to determine whether the infant or toddler or other family members will accept or decline an early intervention service under this part in accordance with State law, without jeopardizing other early intervention services under this part.
 - e. The parent has the right to decline any early intervention service after first accepting the service without jeopardizing other early intervention services.
2. "Native language," when used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part.
3. "Personally identifiable" means that information including:
 - a. The name of the child, the child's parent or other family member;
 - b. The address of the child;
 - c. A personal identifier, such as the child's or parent's social security number; or
 - d. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

4. "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Parent Consent

1. As parents voluntarily participate in Part C (early intervention) services, the parent's informed written consent must be obtained prior to the following:

conducting the initial evaluation or re-evaluation;
conducting a family assessment; and
initiating provision of early intervention services.

2. If parent does not give consent, the public agency:
 - a. makes an effort to ensure that the parent understands his or her child will not be able to receive evaluation, assessment or other services without consent.
 - b. makes an effort to ensure that the family is fully aware of the nature of the evaluation, assessment or services that would be available if consent is given.
3. In the event the parent refuses consent for an initial evaluation/assessment, no action is taken to coerce a parent to accept the evaluation other than in a circumstance where refusal to consent to such procedures constitutes neglect or abuse as defined in the Child Protective Act, Idaho Code Sec. 16-1601 et seq.
 - a. if the service coordinator believes that such refusal to consent is within the statutory definition of neglect or abuse, above, the parent is so notified and a referral made immediately, verbally and/or in writing, to Child Protection Services.
 - b. evaluation/assessment may be provided without parental consent only when ordered by a court of competent jurisdiction.
 - c. if a guardian has been appointed by a court of competent jurisdiction they may consent for such evaluation/assessment.
4. If parents refuse a recommended service, the following may be offered to the family:
 - a. relevant literature or other materials,
 - b. peer counseling to promote and enhance understanding of the value and process of early intervention participation, and
 - c. renewal of contact no more often than at two month intervals to determine if the parent wishes recommended services.

Surrogate Parents

Because no Idaho law specifically regulates surrogate parents in the early intervention/educational setting, the Department of Health and Welfare ensures that procedures are adopted in cases requiring surrogate parents as follows:

- a. The multidisciplinary team determines whether a child needs a surrogate parent using the following criteria:
 - (1) where no parent can be identified,
 - (2) when the whereabouts of a parent cannot be discovered after reasonable efforts, or
 - (3) for a child that is a ward of the state.
- b. The multidisciplinary team identifies potential surrogate parents.
- c. The lead agency appoints an individual to act as a surrogate for the parent of an eligible child.
- d. The lead agency ensures that any person selected as a surrogate parent has no interest that conflicts with the interests of the child he or she represents and has knowledge and skills that ensure adequate representation of the child. An employee of any state agency providing early intervention or other services to the child or any family member of the child may not serve as a surrogate parent. Potential surrogate parents include individuals involved in disability support groups, and employees of public or private agencies not involved in providing early intervention services and the child's foster parents. A person who otherwise qualifies to be a surrogate parent is not an employee solely because of being paid by a public agency to serve as surrogate parent.
- e. A surrogate parent may represent a child in all matters related to:
 - (1) evaluation and assessment of the child;
 - (2) development, implementation, annual evaluation and reviews of IFSPs;
 - (3) ongoing provision of early intervention services; and
 - (4) any other rights under Part C.

Prior Notice

1. Prior written notice is given to parents a reasonable time before public agency or service provider proposes OR refuses to initiate or change identification, evaluation, or placement of the child or provision of early intervention services to the child and/or family. Appropriate intervals for notice may include but are not limited to:
 - a. the family's initial contact with the early intervention system;
 - b. the initial evaluation and assessment is proposed or refused;
 - c. the IFSP is being developed and reviewed; and
 - d. a change in services or placement is proposed or refused, including transition.

2. Content of prior written notice:
 - a. a description of the action proposed or refused by the agency;
 - b. an explanation of why the agency proposes or refuses to take the action;
 - c. a description of any other options that the agency considered and the reasons why those options were rejected;
 - d. a description of each evaluation procedure, test, record or report the agency used as a basis for the proposed or refused action;
 - e. a description of any other factors that are relevant to the agency's proposal or refusal;
 - f. a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and a description of the procedural safeguards, and
 - g. Sources for parents to contact to obtain assistance in understanding the provisions of this part.
3. Notice shall be:
 - a. written in language understandable to the general public; and
 - b. provided in parent's native language, unless not feasible and if parent's native language or other mode of communication is not written, public agency or designated service provider takes steps to ensure:
 - (1) that the notice is translated orally or by other means to parent in parent's native language or mode of communication;
 - (2) parent understands notice;
 - (3) there is written evidence that these requirements have been met, and
 - (4) if parent is deaf or blind, or has no written language or mode of communication, notice is in language or mode of communication normally used by parent.

Opportunity To Examine Records

1. Except as provided in 3 below, parents are afforded the opportunity to examine, inspect and review any records regarding their family and child that relate to:
 - a. screening, evaluation, assessment, eligibility determinations and the development and implementation of the IFSP;
 - b. individual complaints dealing with the family or child; and
 - c. any other records of the early intervention program involving the child and the child's family.

2. Parents are entitled access to records maintained by the lead agency, other public agency and/or a service provider which relate to their child or family.
3. When a parent asks to review a record, the agency or service provider maintaining the records must comply without undue delay, and in any event within 3 days of the date of the request. Priority is given to such review of records prior to preparation for an IFSP meeting or hearing relating to identification, evaluation, placement, or provision of early intervention services.
 - a. If records are requested in connection with an IFSP meeting or a formal hearing the record is provided immediately if possible, but always within 3 days of the date of the request.
 - b. The right to review includes:
 - (1) the right to a response to a reasonable request for explanations and interpretations of the records;
 - (2) the right to obtain copies of the record at no charge;
 - (3) the right to have a representative of the parent's choosing review the record; and
 - (4) the right to inspect and review only the information relating to their child in a record containing information on more than one child, or to be informed of that specific information.
 - c. The agency presumes the parent has authority to inspect/review records related to the child unless the agency has been advised the parent does not have the authority under State law governing guardianship, separation, and divorce.
4. Each participating agency may charge a fee for copies of records in excess of 100 pages if fee does not prevent parents from exercising their right to inspect or review records. A fee may not be charged to search for or retrieve information.
5. A parent may request that information in a record be amended or deleted if it is inaccurate, misleading, or violates the privacy or rights of the child or child's family.
 - a. When amendment or deletion is requested the agency or provider shall act on the request without undue delay but within no more than 10 days of the request.
 - b. If the request to amend or delete is refused the agency or provider shall:
 - (1) inform the parent;
 - (2) notify the parent that he may request a hearing to challenge information in the record. A hearing is conducted under procedures set forth in Section 99.22 of The Family Education Rights and Privacy Act (FERPA) and the decision and action will occur within 30 days.

- c. If following a hearing it is determined that information in the record is inaccurate, misleading or violates privacy or other rights of the child, the agency shall amend the record and inform the parents in writing of the amendment.
 - d. If the parent chooses not to request a hearing, or if the record is not altered as a result of the hearing, the parent may place in the involved record a corrective statement commenting on the information in the record or a statement setting forth why the parent disagrees with the decision on appeal.
 - (1) The corrective statement is maintained by the agency as long as the child's records is maintained; and
 - (2) if the disputed information is ever disclosed by the agency or provider, the parental statement shall also be disclosed.
6. The lead agency, public agency or private provider of Part C services provides parents upon request a list of the types and locations of records collected, maintained or used by public agencies and service providers relating to:
- a. screening, evaluation, assessment, eligibility determinations or the development and implementation of IFSPs;
 - b. individual complaints dealing with children or families; or
 - c. records of any other early intervention services.

Confidentiality

- 1. Details of public notice to parents regarding identification, location, and assessment of children can be found in procedure 5. Comprehensive Child Find System.
- 2. The Department of Health and Welfare, the lead agency, ensures the protection of personally identifiable information which is collected, used, or maintained concerning a child, the child's parent or another family member. Personally identifiable information is confidential. Confidential information is protected and is not released, as provided by Idaho Code 9-340 and any regulations adopted pursuant to that statute. The lead agency also ensures the right of parents or guardians to receive written notice of the exchange of personally identifiable information and the right for parents or guardians to consent to the exchange of this information consistent with federal and state law.
- 3. IDAPA Rules, Title 5, Chapter 1, apply regarding disclosures.
 - a. Parents are informed, as soon as practicable, of disclosures made without their prior consent under the circumstances in the disclosure rules; and
 - b. all such disclosures are noted in the child's or family's records.

4. A log is kept and is accessible to parents, of all disclosures made pursuant to the general release. The log includes the purpose for which the party is authorized to use the record, the name of the person to whom information is disclosed, and the date of disclosure.
5. Parental consent is required before personally identifiable information is disclosed to anyone other than an official of the participating agency collecting or using this information. Parental consent must be obtained if personally identifiable information is to be used for any purpose other than meeting requirements under Part C.
 - a. Parents are informed by the public agency or service provider of their right to refuse to sign such release and such notice will be on each release form.
 - b. The release shall name with specificity all agencies, providers, and individuals (by name or position) to whom information may be disclosed, specific type of information to be disclosed, and the purpose of the disclosure.
 - c. Parents may limit the information disclosed and to whom by so indicating in writing.
 - d. All such releases of information are revocable at any time and shall so state. No release of information is valid for more than twelve (12) months.
 - e. Information from the record shall not be released to participating agencies without parental consent unless authorized to do so under Family Education Rights and Privacy Act (FERPA), Section 99.31.
6.
 - a. If parents refuse to consent to the release of information, the family is informed by the public agency or service provider regarding the potential benefit of releasing the information and the possible adverse effect of refusal.
 - b. No action is taken to coerce a parent to consent to release information except in a circumstance where refusal to consent constitutes neglect or abuse as defined in the Child Protective Act, Idaho Code, Section 16-1601 et seq.
 - (1) If the service provider believes that such refusal to consent is within the statutory definition of neglect or abuse above, the parent is notified and referral made immediately, verbally or in writing, to Child Protection Services.
 - (2) Information may be released without parental consent only according to procedure four (4) above, or when ordered by a court of competent jurisdiction.

7. The lead agency procedures on confidentiality meet the requirements of Section 300.560-.576 with the following modifications:
 - a. State educational agency means the lead agency under this part (Idaho Department of Health and Welfare);
 - b. Special education, related services, free appropriate public education, free public education, or education means "early intervention services" under this part;
 - c. Participating agency, when used in reference to a local educational agency or an intermediate educational agency, means a local service provider under this part;
 - d. reference to Section 300.128 (Identification, Location and Evaluation of Disabled Children) means Sections 303.164 and .321 (Comprehensive Child Find System);
 - e. reference to Section 300.129 (Confidentiality of Personally Identifiable Information) means Section 303.460 (Confidentiality of Information.)
8. To safeguard confidentiality of personally identifiable information, each participating agency:
 - a. ensures protection of personally identifiable information at collection, storage, disclosure and destruction stages;
 - b. appoints one official of the agency to assume responsibility for insuring confidentiality of personally identifiable information;
 - c. provides training and instruction to all persons collecting or using personally identifying information;
 - d. maintains for public inspection a current list of names and position of employees who have access to personally identifiable information;
 - e. informs parents when personally identifiable information is no longer needed to provide services to the child;
 - f. assures that information is destroyed at the request of the parent (permanent records of child's name, address, phone number, program, program location and year completed may be maintained without time limitation); and
 - g. includes sanctions to insure policies and procedures are followed, such as employee discipline pursuant to the Idaho Personnel Commission rules and, in the case of contract providers, contract rescission or modification.

Administrative Procedures for Resolving Parents' Complaints

1. The Department by these regulations operates a system for conducting formal hearings that:
 - a. entertains parental complaints regarding identification; screening; evaluation; assessment; eligibility determinations; the development, review and implementation of the IFSP; the failure to respect parents' procedural rights;
 - b. provides a clear and easy-to-use method of requesting a hearing; and
 - c. resolves a complaint involving more than one public agency and/or service provider.
2. Decisions of the hearing officer or other resolution of the complaint are enforceable regarding all public agencies in the Part C program.
3. Upon receiving a request for complaint resolution, the lead agency appoints a hearing officer to conduct a formal hearing. It is the duty of the hearing office to listen to viewpoints about the complaint, examine information relevant to the issues, and seek to reach a timely resolution of the complaint.
 - a. Hearing officers must have knowledge about the provisions of complaint management required, of relevant law, of the Part C system and of the needs of and services available for eligible children and their families.
 - b. Hearing officers must be impartial.
 - (1) They shall not be employed by any agency or entity involved in the provision of early intervention services or in the care of the child.
 - (2) They shall have no other conflict of interest, either personal or professional, that might impair their objectivity (e.g., work for an agency that has a vested interest in the outcome of the questions presented for resolution at the hearing).
 - (3) A person who otherwise qualifies under b.1 & 2 above is not an employee solely because of being paid by a public agency to implement a complaint resolution process.
 - c. Hearing officers provide a record of proceedings including the written explanations of their decisions that include findings of facts and conclusions of law.
 - (1) Where delay in receipt of a decision might cause a child to suffer harm, a decision may be rendered orally at the conclusion of the hearing and a written decision be filed later, however, not later than 30 days after receipt of a parent's complaint.
 - (2) When the procedure in (j)(1) is followed, parents shall rely on the oral decision. Appeal time will begin to run upon the filing date of the written decision.

4. The Department of Health and Welfare ensures that the parents of children eligible under Part C are afforded the following rights; in any administrative proceeding the parents may:
 - a. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part.
 - b. present evidence, and confront, cross-examine, and compel the attendance of witnesses.
 - c. prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding.
 - d. obtain a written or electronic verbatim transcription of the proceeding.
 - e. obtain written findings of fact and decisions.
 - f. have child who is the subject of the hearing present.
 - g. open the hearing to the public.
5. Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.
6. When parents request a hearing, they are informed of free or low-cost legal or advocacy assistance that may be available to them, and given a list of organizations that provide or arrange such assistance.
7. The lead agency ensures that not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.
8. The lead agency, after deleting any personally identifying information, shall transmit the findings and decision to the ICC and make them available to the public on request.
9. During the pendency of any proceeding, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.
10. If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.
11. Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court.

Mediation

1. A mediation process is available as a supplement to the formal hearing process and may be voluntarily chosen by the parent. The procedures shall ensure that the mediation process:
 - a. is voluntary on the part of the parties;
 - b. is not used to deny or delay a parent's right to a due process hearing or to deny any other rights, and
 - c. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
2. The Infant Toddler Program shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
3. The Infant Toddler Program shall bear the cost of the mediation process, including the costs of meetings.
4. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.
5. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.
6. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

Copies of Procedural Safeguards are available in Braille